The Senate Intelligence Committee . . . had showed a willingness to want to include in their legislation retroactive liability protection for companies that were alleged to have helped the United States in the days after 9/11. Because they were willing to do that, we were willing to show them some of the documents they asked to see.

Mr. President, JAY ROCKEFELLER told me within the past hour that there was no preconceived agreement at all. They wanted to see the document to find out what they should do legislatively.

She says:

But to the extent of anyone else being able to see the documents, I think we will wait and see who else is willing to include that provision in the bill.

I want the record to be very clear that the Judiciary Committee should be able to see those documents. How else can they make a judgment as to what they should do legislatively? They should not have to make some deal with the White House that ''we will let you look at these, but we will write the legislation for you.'' That is wrong. I think it is very clear that the House committees of jurisdiction should also see those documents. It is absolutely wrong for the White House to say, I repeat, that they will let you look at these, but only if you will agree to sign this legislation or you give your approval of the legislation.

We can't do that.

On Friday, the White House Press Secretary said the key documents would be held out to the congressional committees as a prize for anyone willing to commit to a specific legislative path. That is an insult to the American people and to Congress.

I repeat in the most emphatic terms that the administration must turn over these documents to the Senate Judiciary Committee and to the relevant House committees to do their business as they must, and they must do so immediately.

We believe this administration should move forward quickly. I would like to do it before Thanksgiving. Why do I want to do that? This legislation which came out of the Intelligence Committee is good. It strengthens our national security. It provides the Intelligence Committee the tools it needs to go after foreign terrorists and other threats to the American security.

Does this mean the Judiciary Committee cannot improve the legislation? I am confident that perhaps they can. Is the Intelligence Committee's work the know-all and do-all? No. That is why we had joint referral. But it is a good piece of legislation. It gives better protection for America and increases the role of the Foreign Intelligence Surveillance Court. Two, it requires court approval to target U.S. persons overseas. Three, it explicitly prohibits targeting any person reasonably believed to be in the United States. Four, it eliminates ambiguous language on warrantless domestic searches. Five, it states the exclusive means by which electronic surveillance and interception of domestic communications may be conducted.

Also, just as important, other than those five points, it increases oversight and accountability by expanding the requirements in the semiannual report submitted to the congressional Intelligence and Judiciary Committees on intelligence collecting that is authorized by the act. It also requires the head of elements of the Intelligence Committee acting under their authority to conduct yearly audits of intelligence collection. Third, it requires the inspectors general of the Department of Justice and the Intelligence Committee to review the use of the new authority with respect to references to U.S. persons' identities and communications. And it grants limited immunity from potential liability to any telecommunications company that may have assisted the Government in the aftermath of September 11. That is why it is so vitally important that the Judiciary Committee and the respective House committees see what the Intelligence Committee saw without any preconceived arrangements by the White House. Five, it sets forth the procedures so that the Federal courts can review an attorney general certification to determine whether the electronic communication service provider acted within specific orders and in accordance with the certification as directly prescribed by statute. Finally, it sets a 6-year sunset to allow Congress to evaluate the new authority to be carried out, should any of this be changed. That is why we have joint referral, to have the Judiciary Committee take a look at this.

The Intelligence Committee has worked hard to come up with what should be the final legislation that comes to the floor. Finally, the House passes legislation, and we work it out in conference.

We want to move forward. It is important to do that. We acknowledge that. I think it is so wrong that the White House is saying: You can do this but only as we tell you how it can be written; otherwise, we are not going to show you the documents

That is defenseless on the part of the White House.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be able to speak for 6 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TRIBUTE TO THE HONORABLE JAMES L. OAKES

Mr. LEAHY. Mr. President, last week, I had a long talk with Mara Williams, the wife of former U.S. Court of Appeals Judge James Oakes. Jim, who had served as Vermont's attorney general, as our Federal district judge, and with distinction as chief judge of the Second Circuit, had died the previous weekend at the age of 83.

Mara told me how the family had been with Jim a few days before he died, and we then talked about the legacy he left.

I spoke of knowing Jim for 40 years, and how I, and my family of lifelong Democrats, had voted for him for attorney general and had hoped he might be our Governor. As it turned out, the country was far better off having him on the Second Circuit Court of Appeals, and would have been even better off had he been elevated to the Supreme Court, a position he would have held with great distinction.

We all knew of Jim's legal mind and great ability, his dedication to public service, his wonderful sense of humor, and his love for his family, but I knew him especially as a man with a great and good conscience.

Jim Oakes epitomized the role of judge as the protector of our fundamental rights. A decade ago he noted that he was a person who ''still believe[d] that a federal judge can make a difference and—in cases of extreme necessity where basic rights are being infringed—should make a difference when the rest of our political structure bogs down.'' This appreciation for the role of judicial independence is something we must admire and remember.

We worked together when he was attorney general and I was State's attorney, and I particularly remember one very difficult and tragic murder case where we were able to forge an unprecedented use of a grand jury to bring about justice when it looked like that would not have been possible. We talked about that as recently as a couple of years ago, but then, with Jim, we could pick up a conversation from where we had left off 6 months before when we had last seen each other.

Fran Lynggaard Hansen quoted his eldest daughter, Cynthia Meketa, as saying:

He had a very high intellect, but he was never a snob. He had ups and downs in his

early life and always identified with everybody, the cashier at the bank, the guy at the market, the man working at the dump. . . . But that was who he was, kind, generous to people who needed a helping hand. He was a sentimental softie and loved to be a mentor to people, especially his law clerks, shepherding their careers along.

My good friend, Judge Garvan Murtha, said:

He was never afraid to stand up for the rights for others and to name what was wrong. He was a brilliant, caring, funny man and appreciative of people. . . . He was a very wise man. . . . In the Pentagon Papers case, he was dissenting, so he ended up on the wrong side of the Court of Appeals, but the Supreme Court ended up agreeing with him.

His daughter Betsy Oakes said:

I think everyone who loved and admired my father will want to carry on his tremendous spirit of social justice.

Mara tells me of the love all the family had for Jim—and I know the love he had for her, his three children, four stepchildren, grandchildren, and his brother.

Adam Liptak wrote of Judge Oakes in the New York Times, and I ask unanimous consent that his article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 16, 2007]

JAMES L. OAKES DIES AT 83; NIXON CHOICE FOR FEDERAL BENCH

(By Adam Liptak)

James L. Oakes, who was appointed to the federal appeals court in New York by President Richard M. Nixon and yet quickly became one of its leading liberal voices, died on Saturday in Martha's Vineyard, Mass. He was 83.

His death was reported by his wife, Mara Williams Oakes, who said it followed a brief illness.

Judge Oakes served for 36 years on the court, the United States Court of Appeals for the Second Circuit. He was its chief judge from 1988 to 1992.

Scholarly and gregarious, Judge Oakes insisted in his decisions, speeches and writings that judges should never shy away from protecting fundamental rights.

He had little patience, he wrote in a 1997 article in The Columbia Law Review, for politicians who attacked such rulings as improper activism. Historic moments, he added, sometimes required judges to act ''when the rest of our political structure bogs down.''

In this sense, he was, he wrote, ''old-fashioned—fashioned from the thirties of the Great Depression, the forties of war and the Holocaust and fascism, the fifties of the cold war and McCarthyism and Little Rock, and the sixties of the civil rights movement, the assassinations and the would-be Great Society.''

James Lowell Oakes was born in Springfield, Ill., on Feb. 21, 1924.

After graduating from Harvard College and Harvard Law School, Mr. Oakes served as a law clerk to Harrie B. Chase, a Vermont judge who sat on the court that Mr. Oakes would one day join.

Mr. Oakes then spent two decades practicing law and working in the state government in Vermont. In the 1960s, he served for four years in the State Senate and two as the state attorney general. President Nixon made him a federal district judge in Vermont in 1970 and elevated him to the appeals court in 1971.

But Judge Oakes was not proud of the connection. In the years after the Watergate scandal, he used adhesive tape to cover the signatures of President Nixon and Attorney General John N. Mitchell on the judicial commission that hung in his chambers, one of his former clerks, Paul M. Smith, recalled.

Judge Oakes's name soon became synonymous in some circles with liberal jurisprudence. In 1981, he attracted the attention of a young lawyer in the Reagan administration named John G. Roberts Jr. Mr. Roberts, who is now the chief justice of the United States, told his superiors, according to The Washington Post, that a civil rights policy he advocated was reasonable because ''even such an extreme liberal'' as Judge Oakes had approved it.

The Second Circuit is based in Manhattan, and it hears appeals from New York, Connecticut and Vermont. Judge Oakes's chambers were in Brattleboro, Vt., and he visited New York to hear arguments and to confer with his colleagues. After his service as chief judge ended in 1992, he assumed senior status, a sort of semi-retirement.

Besides his wife, of Brattleboro, survivors include a brother, John D. F. Oakes of Wayne, Pa.; three children from an earlier marriage, Cynthia O. Meketa of Bonsall, Calif., Elizabeth H. Oakes of Baltimore, and James L. Oakes of Fairfield, Conn.; and six grandchildren.

In both his judicial and scholarly work, Judge Oakes advocated environmental protections, procedural rights for people accused of crimes, free speech, open government and limits on intellectual property laws.

Among the rulings he was proudest of, his law former clerks said, were a 1980 decision upholding regulations barring sex discrimination in education, a 1987 decision applying the principle of one-person-one-vote to New York City's Board of Estimate, and a 2000 decision allowing illegal immigrants to challenge deportation orders in court. All three decisions were affirmed by the Supreme Court.

Judge Oakes especially prized the Supreme Court's vindication of his 1971 dissent in the Pentagon Papers case, two of his former clerks, Kathleen M. Sullivan and William Treanor, wrote in The New York Law Journal in March. The majority in the Second Circuit had blocked the publication of the papers, a secret history of the Vietnam War obtained by The New York Times. The Supreme Court reversed that decision.

''The press should not be regarded only as a check on inefficient or dishonest government,'' Judge Oakes said in a 1982 lecture on the legacy of the Pentagon Papers case. ''It is important that it also be viewed as a powerful vehicle for the effective functioning of a government that by definition is democratic in nature.'' That required, he said, a near-absolute ban on prior restraints on publication of news articles.

Justice Ruth Bader Ginsburg said in a statement yesterday that Judge Oakes was the ''model of what a great judge should be—learned in the law, but ever mindful of the people law exists to service.''

Judge Oakes could be prescient. He dissented from a 1979 decision endorsing the use of an anonymous jury in an organized crime trial. The decision, he said, was ''without precedent in the history of Anglo-American jurisprudence'' and ''strikes a Vermont judge as bizarre, almost Kafka-esque.''

He added, correctly, as it turned out, that other courts would follow the precedent as surely as ''a flock of sea gulls follows a lobster boat.''

Mr. LEAHY. Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION APPROPRIATIONS ACT, 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3043, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3043) making appropriations for the Departments of Labor, Health and Human Services, and Education and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

Pending:

Harkin/Specter amendment No. 3325, in the nature of a substitute.

Vitter amendment No. 3328 (to amendment No. 3325), to provide a limitation on funds with respect to preventing the importation by individuals of prescription drugs from Canada.

Dorgan amendment No. 3335 (to amendment No. 3325), to increase funding for the State Heart Disease and Stroke Prevention Program of the Centers for Disease Control and Prevention.

Dorgan amendment No. 3345 (to amendment No. 3325), to require that the Secretary of Labor report to Congress regarding jobs lost and created as a result of the North American Free Trade Agreement.

Menendez amendment No. 3347 (to amendment No. 3325), to provide funding for the activities under the Patient Navigator Outreach and Chronic Disease Prevention Act of 2005.

Ensign amendment No. 3342 (to amendment No. 3325), to prohibit the use of funds to administer Social Security benefit payments under a totalization agreement with Mexico.

Ensign amendment No. 3352 (to amendment No. 3325), to prohibit the use of funds to process claims based on illegal work for purposes of receiving Social Security benefits.

Lautenberg/Snowe amendment No. 3350 (to amendment No. 3325), to prohibit the use of funds to provide abstinence education that includes information that is medically inaccurate.

Roberts amendment No. 3365 (to amendment No. 3325), to fund the small business child care grant program.

Reed amendment No. 3360 (to amendment No. 3325), to provide funding for the trauma and emergency medical services programs administered through the Health Resources and Services Administration.

Allard amendment No. 3369 (to amendment No. 3325), to reduce the total amount appropriated to any program that is rated ineffective by the Office of Management and Budget through the Program Assessment Rating Tool (PART).

Coburn amendment No. 3358 (to amendment No. 3325), to require Congress to provide health care for all children in the U.S. before funding special interest pork projects.